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LAW OFFICES OF THOMAS K. CROWE, P.C.

2300 M STREET, N.W.
SUITE 800
WASHINGTON, D.C. 20037

TELEPHONE (202) 973-2890
FAX (202) 973-2891
E-MAIL firm@tkcrowe.com

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

June 17, 2002

BY COURIER

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: IB Docket No. 02-111; File No. ISP-PDR-20020411-00013

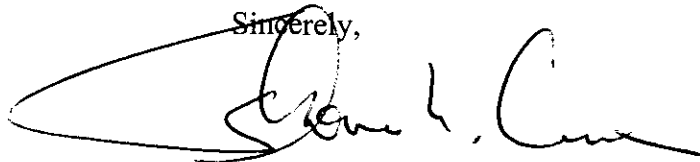
Dear Ms. Dortch:

Enclosed for filing herewith is an original plus four (4) copies of the Office of the Governor of the Commonwealth of the Northern Mariana Island's Petition to Deny the Petition and Applications in the above referenced proceeding.

Please file-stamp and return the extra copy of this filing in the self-addressed, stamped envelope provided for this purpose.

Questions regarding this filing should be directed to the undersigned.

Sincerely,



Thomas K. Crowe,
Counsel for the Office of the
Governor of the Commonwealth of
the Northern Mariana Islands

Enclosures

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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JUN 17 2002

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)

Applications for Consent to)
Transfer Control Filed by)

IB Docket No. 02-111

BELL ATLANTIC NEW ZEALAND)
HOLDINGS, INC.)

And)

PACIFIC TELECOM, INC.)

Petition of Pacific Telecom, Inc.)
for Declaratory Ruling Allowing)
Indirect Foreign Ownership)

File No. ISP-PDR-20020411-00013

PETITION OF THE OFFICE OF THE GOVERNOR OF THE COMMONWEALTH OF
THE NORTHERN MARIANA ISLANDS TO DENY, OR, IN THE ALTERNATIVE, TO
DESIGNATE FOR HEARING

Juan N. Babauta
Governor
COMMONWEALTH OF THE
NORTHERN MARIANA ISLANDS
Box 10007
Saipan, MP 96950
(670) 664-2280

Diego T. Benavente
Lt. Governor
COMMONWEALTH OF THE
NORTHERN MARIANA ISLANDS
Box 10007
Saipan, MP 96950
(670) 664-2280

Robert T. Torres
Attorney General
COMMONWEALTH OF THE
NORTHERN MARIANA ISLANDS
Box 10007
Saipan, MP 96950
(670) 664-2280

Thomas K. Crowe
LAW OFFICES OF THOMAS K.
CROWE, P.C.
2300 M Street, N.W.
Suite 800
Washington, D.C. 20037
(202) 973-2890

COUNSEL FOR THE OFFICE OF THE
GOVERNOR OF THE COMMONWEALTH
OF THE NORTHERN MARIANA ISLANDS

June 17, 2002

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Summary Of Petition

The Office of the Governor of the Commonwealth of the Northern Mariana Islands ("Commonwealth") petitions the Commission to deny the Petition filed on April 11, 2002 by Pacific Telecom Inc. ("PTI") for a declaratory ruling under Section 310 (b)(4) of the Communications Act of 1934, as amended ("1934 Act"), to permit indirect foreign ownership exceeding 25% in GTE Pacifica Inc. ("GTE Pacifica"). The Commonwealth also petitions the Commission to deny the applications filed on the same day for consent to transfer control of the Title II and Title III licenses held by Micronesian Telecommunications Corporation ("MTC") and its wholly-owned subsidiary, GTE Pacifica, to PTI ("Applications"), or alternatively, to designate the matter for hearing.

The Petition Seeking A Waiver of the Statutory Ceiling Under Section 310 (b)(4) Should Be Denied.

In the current post-September 11th environment, now is not the time to authorize substantial foreign control over a sole-source monopoly telecommunications network in a distant insular area which is of major strategic importance to the U.S. In short, foreign control over the Commonwealth's sole-source telecommunications network has the potential to jeopardize U.S. national security and public safety, and therefore is not in the public interest.

As demonstrated, the Commonwealth telecommunications market is a sole-source, monopoly market dominated by MTC. Both the small population and physical size of the Commonwealth have historically served to sustain a monopoly telecommunications environment and to limit the emergence of viable competition.

Critical infrastructure services, including 911 emergency services and many private sector services, depend upon the Commonwealth telecommunications network. The U.S. military as well as the International Broadcasting Bureau ("IBB"), which oversees both the

Voice of America and Radio Free Asia, also, at least in part, depend upon the network. Permitting PTI to acquire MTC would place the Commonwealth sole-source, monopoly network under foreign control. Such action could render the Commonwealth network and, in turn, critical infrastructure services as well as U.S. military and IBB activities that utilize the network, potentially vulnerable in a time of war or national crisis.

In addition, the proposed transaction is not in the public interest due to the Commonwealth's distant and strategic geographic location. The U.S. depends, for purposes of national defense, upon the strategic location of the Commonwealth, situated within 2000 miles of mainland China, Taiwan, North Korea, and the Philippines. Moreover, the Commonwealth's distant location from the mainland U.S. renders it more difficult to defend during a time of war or national crisis. In light of the Nation's ongoing war against terrorism, it would be folly to grant the Petition at this time.

The Applications Must Be Denied As PTI Fails To Show That It Is Qualified To Operate The Commonwealth's Telecommunications Network.

PTI fails to demonstrate that it is qualified under Sections 310(d) and 308 of the 1934 Act to assume the operations of MTC, and thus, that the proposed transfers would favor the public interest, convenience and necessity.

As shown, the Applications fall well short of satisfying the requisite burden of proof with respect to technical or financial qualification as well as character. Specifically, only minimal factual data addressing technical capability, and no factual data purporting to show financial capability, in the context of this proceeding has been supplied. Perhaps more significantly, disturbing questions (including an apparent guilty plea to a felony charge for a crime of dishonesty under federal law) exist pertaining to character. Serious questions also exist with respect to citizenship and ownership structure. Thus, the Applications fail, as a matter of law, to

satisfy the requisite burden of proof (*i.e.*, by a preponderance of the evidence), and therefore, must be denied.

Given that the Commonwealth market is a monopoly market for substantially all communications services, and virtually no competitive alternatives exist, it is critical that PTI be determined, on the record, to be qualified to operate the network. Anything less could harm ratepayers in the Commonwealth, and may have an adverse impact upon critical infrastructure services and U.S. strategic interests in the Commonwealth.

The Proposed Transaction Could Undermine Rate Integration In The Commonwealth.

The proposed transaction, if approved in its current form, has the very real potential to result in the loss of important products and services as well as comparatively low per minute pricing, thereby undermining rate integration in the Commonwealth in violation of Section 254 (g) of the 1934 Act. Since MTC is the dominant off-island service provider, its departure from the Commonwealth market would mean the loss of the benchmark integration rate, potentially undermining existing low rates. The sale of MTC to PTI could also mean the loss of attractive calling plans resulting from the integration of Verizon products and services. Were this to occur, Section 254 (g) would be compromised; thus, the proposed transaction is not in the public interest.

The Commonwealth recognizes that Verizon Communications, Inc. and Bell Atlantic New Zealand Holdings, Inc. seek to exit the Commonwealth market. The Commonwealth does not wish to stand in the way of this objective and is willing to work with Verizon in achieving this goal. However, the transaction as presently structured is not an acceptable solution, as it would inevitably harm the public interest.

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Applications for Consent to)	IB Docket No. 02-111
Transfer Control Filed by)	
)	
BELL ATLANTIC NEW ZEALAND)	
HOLDINGS, INC.)	
)	
And)	
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PACIFIC TELECOM, INC.)	
)	
Petition of Pacific Telecom, Inc.)	File No. ISP-PDR-20020411-00013
for Declaratory Ruling Allowing)	
Indirect Foreign Ownership)	

**PETITION OF THE OFFICE OF THE GOVERNOR OF THE COMMONWEALTH OF
THE NORTHERN MARIANA ISLANDS TO DENY, OR, IN THE ALTERNATIVE, TO
DESIGNATE FOR HEARING**

The Office of the Governor of the Commonwealth of the Northern Mariana Islands ("Commonwealth") hereby petitions the Commission to deny the Petition filed on April 11, 2002, by Pacific Telecom Inc. ("PTI"), for a declaratory ruling under Section 310(b)(4) of the Communications Act of 1934, as amended ("1934 Act"), to permit indirect foreign ownership exceeding 25% in GTE Pacifica Inc. ("GTE Pacifica").¹ Additionally, the Commonwealth hereby petitions the Commission to deny the applications filed on April 11, 2002, for consent to

¹ *In re Pacific Telecom Inc., Petition for Declaratory Ruling Under Section 310(b)(4) of the Communications Act of 1934, as Amended, to Permit Indirect Foreign Ownership Exceeding 25 Percent in Common Carrier Licensee GTE Pacifica Inc.* (Apr. 11, 2002) ("hereinafter, "Petition").

transfer control of the licenses held by Micronesian Telecommunications Corporation (“MTC”) and its wholly-owned subsidiary, GTE Pacifica, from Bell Atlantic New Zealand Holdings, Inc. (“BANZHI”) to PTI,² or, alternatively, to designate the matter for hearing.

As demonstrated below, the request of a ruling allowing foreign ownership in excess of the Section 310(b)(4) statutory limit should be denied, as this would jeopardize U.S. national security as well as public safety. Further, the Applications must be denied --as a matter of law-- as PTI has failed to show that the transfers of control are in the public interest by, *inter alia*, failing to prove that PTI is qualified (technically and financially as well as with respect to character and citizenship) to operate the Commonwealth’s telecommunications network. Finally, the Applications, if granted, would jeopardize rate integration in the Commonwealth.

The Commonwealth recognizes that BANZHI and its parent company, Verizon Communications, Inc. (“Verizon”) wish to exit the Commonwealth market. The Commonwealth does not wish to stand in the way of this objective and is willing to work with Verizon to facilitate this goal. However, the proposed transaction is not the answer, as it would invariably harm the public interest.

² Applications were jointly filed by PTI and BANZHI (“Applicants”) seeking authorization 1) under Section 310 of the 1934 Act, 47 U.S.C. § 310, to transfer satellite earth station and cellular telephone authorizations held by GTE Pacifica; 2) under “An Act Relating to Landing and Operation of Submarine Cables in the United States” (“Cable Landing License Act”), 47 U.S.C. §§ 34-39, to transfer a cable landing license held by GTE Pacifica; and 3) under Section 214 of the 1934 Act to transfer Section 214 international and blanket domestic authorizations held by both MTC and GTE Pacifica (“Applications”). See Commission Seeks Comment on Applications for Consent to Transfer Control Filed by Bell Atlantic New Zealand Holdings, Inc. and Pacific Telecom Inc., *Public Notice*, DA 02-1173, (May 16, 2002).

I. INTRODUCTION

A. The Petition and Applications.

PTI, the proposed transferee, is a privately held corporation organized under the laws of the Commonwealth. PTI was formed as an investment vehicle to purchase the assets of MTC and its wholly-owned subsidiary, GTE Pacifica. MTC and GTE Pacifica are affiliates of Verizon. PTI has three shareholders: Prospector Investment Holdings Inc. (“Prospector”), THC Communications Corporation (“THC Communications”), and Missouri Holdings Corporation (“Missouri Holdings”). Prospector is incorporated under the laws of the Cayman Islands, British Indies, holding 50% of the equity of PTI. Prospector is 100% owned by Philippine interests. THC Communications is incorporated under the laws of the Commonwealth, holding 30% of the equity of PTI. THC Communications’ ownership interests, according to the Applicants, are 2.1% foreign (*i.e.*, Hong Kong, Philippine and United Kingdom based). Missouri Holdings is also incorporated under the laws of the Commonwealth, and holds 20% of the equity of PTI. Missouri Holdings is 100% owned by Canadian interests.

Section 310(b) of the 1934 Act prohibits foreign ownership of a radio license by any corporation directly or indirectly controlled by any other corporation of which more than 25% of the stock is foreign held, absent a waiver from the Commission.³ The Commission may grant a waiver of the 25% foreign indirect ownership limit upon a finding that it is in the public interest. PTI has petitioned for a waiver of the foreign ownership ceiling requesting a declaratory ruling that it would not serve the public interest to prohibit indirect foreign ownership in an amount up to 72.1%, with additional flexibility to increase that level to 87.1%.

³ See 47 U.S.C. §310(b)(4).

The Applicants additionally seek Commission consent to the transfer of various Title II and III licenses held by MTC and GTE Pacifica to PTI.

B. The Commonwealth.

The Commonwealth is a self-governing commonwealth in political union with and under the sovereignty of the United States. Consisting of 14 islands strategically located in the North Pacific Ocean, the Commonwealth is approximately 3,300 miles west of Honolulu, 1,272 miles southeast of Tokyo and 50 miles north of the Territory of Guam. The relationship between the Commonwealth and the United States is governed by the “Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America” (“Covenant”).⁴ The Commonwealth is part of the North American Numbering Plan⁵ and is encompassed under the Commission’s rate integration policy.⁶ The Commission has ruled that the Telecommunications Act of 1996 (“1996 Act”) applies to the Commonwealth, as the term “State” is defined in the 1996 Act to include all U.S. territories and possessions, including the Commonwealth.⁷ MTC and its wholly-owned subsidiary, GTE Pacifica,⁸ are the dominant

⁴ See Exhibit at 1. The Commission should be mindful of Section 904(a) of the Covenant which provides in part, as follows; “[t]he Government of the United States will give sympathetic consideration to the views of the Government of the Northern Mariana Islands on international matters directly affecting the Northern Mariana Islands....” Covenant § 904.

⁵ See Exhibit at 3.

⁶ *Id.* at 3.

⁷ See, e.g., *In re* Policy and Rules Concerning the Interstate, Interexchange Marketplace, Implementation of Section 254(g) of the Communications Act of 1934, as amended, *Report and Order*, 11 FCC Rcd. 9564, para. 55 (1996) (“*Geographic Rate Averaging Order*”); *In re* Regulatory Treatment of LEC Provision of Interexchange Services Originating in the LEC’s Local Exchange Area and Policy and Rules Concerning the Interstate, Interexchange Marketplace, *Second Report and Order* in CC Dkt. No. 96-149, and *Third Report and Order* in CC Dkt. No. 96-61, FCC 97-142, para. 174 (1997).

⁸ As used herein, “MTC” generally refers to both MTC and its wholly-owned subsidiary, GTE Pacifica.

providers of all forms of telecommunications services in the Commonwealth.⁹ For more detailed background information on the Commonwealth, *see* Exhibit.

II. THE PETITION SEEKING A WAIVER OF THE STATUTORY CEILING UNDER SECTION 310(B)(4) SHOULD BE DENIED.

In the current post-September 11th environment, now is not the time to authorize substantial foreign control over a sole-source monopoly telecommunications network in a distant insular area which is of major strategic importance to the U.S. In short, foreign control over the Commonwealth's sole-source network has the potential to jeopardize U.S. national security and public safety, and therefore is not in the public interest.

As shown below, the Commonwealth telecommunications market is a sole-source, monopoly market dominated by MTC. Critical Commonwealth infrastructure services, including 911 emergency services, depend upon that network. U.S. military and International Broadcasting Bureau ("IBB") facilities also, in part, depend upon the network. Permitting PTI to acquire MTC would place the Commonwealth sole-source, monopoly network under foreign control. Such action could render the Commonwealth telecommunications network and, in turn, critical infrastructure services and U.S. military as well as IBB activities that utilize the network, potentially vulnerable in a time of war or national crisis.

In addition, the proposed transaction is not in the public interest due to the Commonwealth's distant and strategic geographic location. The U.S. depends, for purposes of national defense, upon the strategic location of the Commonwealth, situated within 2000 miles of mainland China, Taiwan, North Korea, and the Philippines. Moreover, the Commonwealth's distant location from the mainland U.S. renders it more difficult to defend during a time of war

⁹

See infra at 8-9.

or national crisis. In light of the Nation's ongoing war against terrorism, it would be folly to grant the Petition at this time.

A. The Commission's "Public Interest" Analysis Must Emphasize Protecting National Security and Public Safety.

Pursuant to Sections 214(a) and 310(d) of the 1934 Act, the Commission must determine whether the Applicants have demonstrated that the proposed transfer of control of MTC's and GTE Pacifica's licenses will serve the public interest, convenience and necessity.¹⁰ In discharging these responsibilities, the Commission must weigh the "potential public interest harms of the proposed transactions against the potential public interest benefits to ensure that, on balance, the transfers of control serve the public interest, convenience and necessity."¹¹ As part of its public interest analysis, the Commission is also required to take into account the broad aims of the 1934 Act, including national security and public safety concerns.¹²

¹⁰ See 47 U.S.C. §§ 214(a) and 310(d); Application of VoiceStream Wireless Corporation, Powertel, Inc., Transferors, and Deutsche Telekom AG, Transferee, for Consent to Transfer Control of Licenses and Authorizations Pursuant to Sections 214 and 310(d) of the Communications Act and for Declaratory Ruling Pursuant to Section 310 of the Communications Act, *Memorandum Opinion and Order*, 16 FCC Rcd. 9779, 9789 (2001) ("*VoiceStream/Deutsche Telekom Order*"). The Applicants bear the burden of proof of showing that the benefits outweigh the harms. See, e.g., Application of WorldCom, Inc., and MCI Communications Corporation for Transfer of Control of MCI to WorldCom, *Report and Order*, 13 FCC Rcd. 18025, 18031 (1998) ("*MCI/WorldCom Order*"); Applications of NYNEX Corp., Transferor, and Bell Atlantic Corp., Transferee, For Consent to Transfer Control of NYNEX Corp. and Its Subsidiaries, File No. NSD-L-96-10, *Memorandum Opinion and Order*, 12 FCC Rcd. 19985, 20063 (1997) ("*Bell Atlantic/NYNEX Order*").

¹¹ *VoiceStream/Deutsche Telekom Order* at 9789.

¹² See, e.g., Application of Ameritech Corporation, Transferor, and GTE Consumer Services Incorporated, Transferee, for Consent to Transfer Control of Licenses and Authorizations, *Memorandum Opinion and Order*, 15 FCC Rcd. 6667, 6670, (1999) ("*Ameritech/GTE Order*"); See also *In re Rules and Policies on Foreign Participation in the U.S. Telecommunications Market, Report and Order and Order on Reconsideration*, 12 FCC Rcd. 23891, 23918 (1997) ("*Foreign Participation Order*"). Significantly, 47 U.S.C. § 151 identifies two of the purposes of the 1934 Act as including the furtherance of national defense and safety of life and property: "For the purpose of regulating interstate and foreign commerce in communication by wire and radio so as to make available, so far as possible, to all the people of the United States, without discrimination on the basis of race, color, religion, national origin, or sex, a rapid, efficient, Nation-wide, and world-wide wire and radio communication service with adequate facilities at reasonable charges, for the purpose of the national defense, for the purpose of

Given the special circumstances presented in the instant proceeding, it is abundantly clear that the Commission's public interest analysis must emphasize the national security and public safety concerns presented by the proposed transaction, particularly in light of the events of September 11th. In a speech shortly after September 11th, Commissioner Michael Copps stated "[r]ecent events do not change what the public interest is, but they focus us on the most fundamental pillar of the public interest, which is the safety and security of the people."¹³ Moreover, according to Commission Chairman Michael Powell, "[w]ith the events of September 11th...[w]e must be aggressive in ensuring that our policies maximize the many efforts being made to make our nation safe."¹⁴ The Commission's analysis should also encompass the government's related responsibility to ensure the integrity and security of the U.S. telecommunications system.¹⁵

Finally, in considering these factors, the Commission's analysis is not, as a matter of law, constrained or limited by the presumption established in its *Foreign Participation Order*¹⁶ that foreign investment would serve the public interest since the proposed foreign ownership interest

promoting safety of life and property through the use of wire and radio communication...." See 47 U.S.C. § 151 (emphasis added).

¹³ Commissioner Michael J. Copps, Remarks at the Meeting of the United States Telecommunications Training Institute (Sept. 28, 2001). The Commission itself has acknowledged the importance of prioritizing security and safety in today's environment, by, among other things, creating within the Commission the Homeland Security Policy Council. See <http://www.fcc.gov/hspc/> (visited June 1, 2002).

¹⁴ See <http://www.fcc.gov/hspc/>.

¹⁵ See National Security Council, *Protecting America's Critical Infrastructure*, Presidential Decision Directive NSC-63, available at <http://www.fas.org/irp/offdocs/pdd-63.htm> ("*Presidential Decision Directive NSC-63*") (visited May 30, 2002).

¹⁶ See *Foreign Participation Order* at 23910.

in PTI is based in World Trade Organization (“WTO”) Member countries. That presumption is expressly limited to competitive factors.¹⁷

B. Foreign Control Over The Sole-Source, Monopoly Telecommunications Network Located In The Commonwealth Is Not In The Public Interest.

Reasons of national defense and national security mandate denial of the Petition. As shown below, the Commonwealth telecommunications network is a sole-source, monopoly network. Competition is virtually non-existent.¹⁸ Since both critical infrastructure services and U.S. national defense functions are dependent upon the network, both would be potentially vulnerable in a state of war or national crisis were the network under foreign control.

1. MTC Dominates the Commonwealth Sole-Source Market.

MTC (and its wholly-owned subsidiary, GTE Pacifica) are indisputably the dominant providers of all forms of telecommunications services in the Commonwealth. Both the small population and physical size of the Commonwealth have historically served to sustain a monopoly telecommunications environment and to limit the emergence of viable competition.

Competition in providing local telecommunications services is non-existent in the Commonwealth. To date, MTC is the only company authorized under the Commonwealth’s

¹⁷ In its *Foreign Participation Order*, the Commission adopted a rebuttable presumption that applications from WTO Members do not raise concerns that would justify denial on competitive grounds. See *Foreign Participation Order* at 23913. The Commission went on to clarify this rebuttable presumption, stating “[O]ur presumption in favor of entry for foreign participation applies *only to competition concerns* that may arise because of a foreign carrier’s market power in a foreign market. *Id.* at 23916, 23917 (emphasis added). Thus, the presumption is expressly limited to concerns regarding competition, and is merely one of several factors the Commission considers in its public interest analysis. In illustrating some of the other factors it includes in its public interest analysis, the Commission stated that it will “...continue to find national security, law enforcement, foreign policy and trade policy concerns relevant to our decision to grant or deny Section 214 and 310(b)(4) applications from applicants from WTO Member.” *Id.* at 23919. Further, the Commission noted that such factors as potential harm to consumers will be considered in its public interest analysis, and could serve as grounds to deny an application of a WTO Member. *Id.* at 24046. Also see 47 U.S.C. § 151.

¹⁸ This distinguishes the facts at hand from virtually all other transfer applications the Commission has processed in recent years.

local telecommunications law to provide local service¹⁹ and apparently has never entered into an interconnection agreement under the 1996 Act. Local service between the islands of Saipan, Tinian, and Rota is provided over a fiber optic submarine cable owned exclusively by GTE Pacifica. Only a limited number of wireless service alternatives exist in the Commonwealth, as GTE Pacifica is the dominant provider.

GTE Pacifica also controls access off the islands of the Commonwealth by means of its exclusive ownership of C-band transmit/receive earth stations as well as a fiber optic submarine cable connecting the Commonwealth with Guam and, in turn, the rest of the world.²⁰ Only limited domestic and international off-island competition exists. MTC is also the predominant supplier of backbone Internet services and the dominant Internet service provider in the Commonwealth.

In short, virtually no competitive alternatives to MTC's facilities and services exist, distinguishing the Commonwealth market *radically* from competitive telecommunications markets in the mainland U.S. This lack of viable competitive alternatives in the Commonwealth market gives rise to unique national security and public safety risks were the Commonwealth telecommunications network to fall under foreign control.

2. *Foreign Control Over the Network Could Adversely Affect Critical Commonwealth Infrastructure Services.*

Critical infrastructure services, including 911 public safety services and essential private sector services, would be potentially vulnerable were the Commonwealth sole-source telecommunications network to fall under foreign control. In the today's economy, critical

¹⁹ Commonwealth Telecommunications Act, Pub. L. No. 12-39, H.B. No. 12-006 (2001).

²⁰ While connecting the three main populated islands of Saipan, Tinian and Rota, the submarine cable also runs to Guam, thereby connecting the Commonwealth with multiple international submarine cables connecting into Guam.

infrastructure services are increasingly interlinked,²¹ and the hub of this interdependency is the telecommunications system.

According to Presidential Decision Directive/NSC-63,

Critical Infrastructures are those physical and cyber-based systems essential to the minimum operations of the economy and government. They include, but are not limited to, telecommunications, energy, banking and finance, transportation, water systems and emergency services, both government and private. Many of the nation's critical infrastructures have historically been physically and logically separate systems that have little interdependence. As a result of advances in information technology and the necessity of improved efficiency, however, these infrastructures have become increasingly automated and interlinked. The same advances have created new vulnerabilities to equipment failure, human error, weather, and other natural causes and physical and cyber attacks. Addressing these vulnerabilities will necessarily require flexible, evolutionary approaches that span both the public and private sectors and protect both domestic and international security.

Because of our military strength, future enemies, whether nations, groups, or individuals, may seek to harm us in non-traditional ways including attacks within the United States. Because our economy is increasingly reliant on interdependent and cyber-supported infrastructures, non-traditional attacks on our infrastructure and information systems may be capable of significantly harming both our military power and our economy.²²

The Presidential Decision Directive goes on to additionally state,

It has long been the policy of the United States to assure the continuity and viability of critical infrastructures. *I intend that the United States will take all necessary measures to swiftly eliminate any significant vulnerability to both*

²¹ See Robert F. Dacey, Director, Information Security Issues, General Accounting Office, Statement Before the Subcommittee on Government Efficiency, Financial Management and Intergovernmental Relations and the Subcommittee on Technology and Procurement Policy, Committee on Government Reform, House of Representatives (May 2, 2002). In his statement, Mr. Dacey provides: "Dramatic increases in computer interconnectivity, especially in the use of the Internet, continue to revolutionize the way our government, our nation, and much of the world communicate and conduct business. However, this widespread interconnectivity also poses significant risks to our computer systems and, more important, to the critical operations and infrastructures they support, such as telecommunications, power distribution, public health, national defense (including the military's war fighting capability), law enforcement, government and emergency services."

²² See Presidential Decision Directive NSC-63 at 1.

*physical and cyber attacks on our critical infrastructures, including especially our cyber systems.*²³

Since the Commonwealth's telecommunications network is a sole-source, monopoly network, its critical infrastructure services, including 911 public safety services and other vital private sector services, are largely interdependent upon that network. Were the network to be under foreign control during a time of war or national crisis, these critical infrastructure services would be potentially vulnerable to disruption.²⁴ Consistent with Presidential Decision Directive/NSC-63, this vulnerability should be avoided due to the national security concerns it raises by preventing foreign-controlled interests from acquiring MTC.

3. *Foreign Control Over the Network Would Jeopardize U.S. National Security Interests in the Commonwealth.*

Important U.S. national security interests would be potentially vulnerable were the Commonwealth sole-source telecommunications network to fall under foreign control. The U.S. military has a significant interest in the Commonwealth for, among other things, training and maintaining "forward deployed" military units there.²⁵ In addition, important U.S. IBB facilities rebroadcast from locations in the Commonwealth. While U.S. military activities and IBB transmission can apparently occur, to a large extent, independent of the Commonwealth telecommunications network, both do utilize the network to some degree. Were the sole-source

²³ *Id.* (emphasis added).

²⁴ Indirectly, therefore, the Commonwealth's economy--already in a weakened state due to the lasting effects of the Asian market recession--would be vulnerable. See Aldwin R. Fajardo & Edith G. Alejandro, No Quick Fix for NMI Economy – Gloomier Picture Painted for Islands' Business Climate, Saipan Tribune Online (Sept. 3, 2001), available at <http://www.tribune.co.mp/search.cfm?Display=yes&ID=15375> (visited June 5, 2002); Aldwin R. Fajardo, Japan Recession Chokes NMI Tourism, Saipan Tribune Online (Sept. 11, 2001), available at <http://www.tribune.co.mp/search.cfm?Display=yes&ID=15513> (visited June 5, 2002).

²⁵ See <http://www.wlf.org/Litigating/litcases.asp?detail=194> (visited June 1, 2002).

network to fall under foreign control during a time of war or national crisis, U.S. military and IBB activities could be compromised, potentially imperiling national security.

Military Operations. The U.S. military commits significant resources to its activities in the Commonwealth. The Covenant obligates the United States to have “complete responsibility for and authority with respect to matters relating to foreign affairs and defense affecting the Northern Mariana Islands.”²⁶ U.S. military activities in the Commonwealth are both intended to protect the Commonwealth as well as further broaden U.S. strategic objectives in the region. The federal government leases approximately 18,182 acres of land in the Commonwealth, which is used for military purposes.²⁷ The U.S. Navy and Marines use some of this land to conduct joint training exercises, including the use of troops, ships and aircraft, to maintain the combat readiness of “forward deployed” military units.²⁸ In addition, several military transport ships are routinely positioned just off the coast of Saipan, available for deployment wherever strategically needed in the region.²⁹ While the military maintains its own communications capabilities,

²⁶ See Covenant § 104.

²⁷ Specifically, the federal government leases approximately 17,799 acres on Tinian including adjacent water areas; 177 acres on Saipan; and 206 acres on Farallon de Medinilla Island and adjacent water areas. See Covenant § 802.

²⁸ Farallon de Medinilla is the only live-fire training location in the western Pacific. The uninhabited island is used for bombing exercises to maintain the skills of combat-ready troops in the region. See <http://www.guampdn.com/news/stories/20020607/localnews/458578.html> (visited June 6, 2002). Additionally, Saipan was also the home of a Space Surveillance Station that could be used to track launches of objects (including missiles and rockets) from China and central Asia. See generally <http://www-tradoc.army.mil/dcsd/spaceweb/chap07f.htm> (visited June 7, 2002).

²⁹ The federal government itself has a significant presence in the Commonwealth. The following U.S. government entities have Commonwealth office locations: Department of Defense, Department of Interior, Department of Justice, Department of Transportation, Department of Labor, Department of Agriculture, Social Security Administration, U.S. National Labor Relations Board, U.S. Postal Service, U.S. Probation, U.S. District Court, and IBB. 2001 CNMI Official Telephone Directory, at 30-31 (2001). There can be little doubt that these government offices rely heavily on the Commonwealth telephone network.

certain functions and federal government operations in the Commonwealth appear to depend on the sole-source telecommunications network.

IBB Facilities. The IBB, a federal government entity, oversees both the Voice of America (“VOA”) and Radio Free Asia (“RFA”), each of which relies upon transmission facilities in the Commonwealth.³⁰ VOA, whose mission is to broadcast the policies and views of the U.S., provides programming *via* radio, TV and the Internet in 53 languages throughout the world. RFA broadcasts news and information in 9 languages to listeners in Asia who do not have access to full and free news media.³¹ Its purpose is to deliver accurate and timely news, information and commentary, and promote the rights of freedom of opinion and expression within Asian countries.³²

The IBB owns and operates 3 transmitters in Saipan and 8 in Tinian that are used by VOA and RFA to rebroadcast signals within the Pacific Rim. These transmitters are independent of the monopoly telecommunications network; however, both VOA and RFA appear to depend upon the network for communications within the Commonwealth and the outside world.

As the Commonwealth’s telecommunications network is a sole-source, monopoly network, U.S. military and IBB activities appear to utilize that network. Were the network to be under foreign control during a time of war or national crisis, U.S. military and IBB activities

³⁰ The IBB was established when President Clinton signed the International Broadcasting Act of 1994 (Public Law No. 103-236), which also created a 9-member, bipartisan Broadcasting Board of Governors (BBG). One of the BBG members is the U.S. Secretary of State. In October 1999, the BBG/IBB was separated from the former U.S. Information Agency and became an independent federal entity as mandated by the Foreign Affairs Reform and Restructuring Act (Public Law No. 105-277) of 1998. The BBG provides oversight and guidance to the federally funded VOA and RFA. RFA is a non-profit corporation. For more information, see <http://www.ibb.gov> (visited May 24, 2002).

³¹ See http://www.rfa.org/about_rfa/about_overview.html (visited May 20, 2002).

³² *Id.*

could be vulnerable to disruption. Consistent with Presidential Decision Directive/NSC-63, this potential vulnerability to the national defense should be avoided by preventing foreign-controlled interests from acquiring MTC.

As the mainland U.S. telecommunications market has become more competitive over the past two decades, the Commission has tended to grant proportionally larger percentage ownership waivers under Section 310(d) of the 1934 Act³³. As the Commission has acknowledged, the reason for this is the practical inability of a foreign controlled provider to seize control over the U.S. communications network in a time of war. According to the Commission,

The original national security rationale for limiting foreign ownership in a parent corporation has less applicability today than it had in the 1930's. Today we have a plethora of service providers. No single licensee which is owned in part by a foreign corporation could take over the wireless and wireline services in the United States in a time of war.³⁴

This is not the case, however, with respect to the Commonwealth. The “national security rationale” to which the Commission alludes unmistakably applies to the Commonwealth. While a “plethora of service providers” may exist in the mainland U.S., such that no single foreign-owned provider could gain control of the telecommunications network, this is not the case in the Commonwealth.

As shown above, foreign control over the Commonwealth's sole-source network, a network on which critical Commonwealth infrastructure services depend and U.S. military and IBB facilities in part depend, would jeopardize U.S. national security and therefore is not in the public interest.

³³ See, e.g., *VoiceStream/Deutsche Telekom Order*.

³⁴ *In re Market Entry and Regulation of Foreign-affiliated Entities, Public Notice*, 10 FCC Rcd. 4844, 4851, n. 16 (1995).

C. The Commonwealth's Distant and Strategic Location Dictates Against Foreign Ownership Of The Telecommunications Network.

The telecommunications network should not be controlled by foreign interests in the Commonwealth, given the national security issues raised by its distant and strategic geographic location.

The Commonwealth is geographically located in the North Pacific Ocean some 3,300 miles from Honolulu, 5,625 miles from San Francisco, and 1,272 miles from Tokyo.³⁵ Its distant geographic location from the mainland U.S. renders it more difficult to protect and defend during a time of war or national crisis. For this reason, the telecommunications network--arguably the most critical infrastructure service in the Commonwealth from a national security perspective--should remain under U.S. control.

Due to its location, the United States has long recognized the strategic importance of the Commonwealth in maintaining peace and freedom throughout the Pacific Rim.³⁶ Less than 2000 miles from mainland China, Taiwan, North Korea, and the Philippines,³⁷ the Commonwealth is situated within a relatively close distance to regions where U.S. national security could be jeopardized in the future. This is underscored by the fact that the U.S. military stations "forward

³⁵ See Exhibit at 2.

³⁶ For instance, in an article entitled *U.S. Military Build-up on Mariana Island of Tinian*, Air Force Commander Colonel Mark Gehri noted the strategic importance of the Commonwealth in maintaining peace and freedom in the Pacific as it is the farthest point the U.S. Military can go in the region, enabling America to strike anyone who would challenge the Pacific. See <http://www.cosmos.ne.jp/~miyagawa/nagocnet/data/saipan1e.html> ("*U.S. Military Build-up on Mariana Island of Tinian*") (visited May 21, 2002). Additionally, after gaining control of the islands of the Commonwealth in 1944 through military victories in World War II, the United States kept the islands under military control until 1971 "because of their strategic significance." See http://www.census.gov/population/www/proas/pr_ia_hist.html (visited May 30, 2002). Further, the Central Intelligence Agency currently lists the Commonwealth as a "strategic location in the North Pacific Ocean." See <http://www.cia.gov/cia/publications/factbook/geos/cq.html> (visited May 30, 2002).

³⁷ See <http://www.wcrl.ars.usda.gov/cec/java/lat-long.htm> (visited May 30, 2002).

deployed” units in the Commonwealth.³⁸ Further, as is well known, the Commonwealth’s strategic location played a critical role in hastening the end of World War II, serving as the launching point, from the island of Tinian, of the B-29 bombers, the “Enola Gay” and the “Bockscar.”³⁹ Thus, the strategic geographic location of the Commonwealth is yet another reason why the Commission should not permit foreign control of the Commonwealth telecommunications network.

III. THE APPLICATIONS MUST BE DENIED UNDER SECTION 310 AS PTI FAILS TO SHOW THAT IT IS QUALIFIED TO OPERATE THE COMMONWEALTH’S TELECOMMUNICATIONS NETWORK.

PTI fails to demonstrate that it is qualified to assume the operations of MTC, and thus, that the proposed transfers would further the public interest, convenience, and necessity.

Section 310(d) of the 1934 Act requires the Commission to dispose of applications for transfers of control “as if the proposed transferee or assignee were making application under section 308 for the permit or license in question.”⁴⁰ Section 308 provides criteria under which applications are reviewed, including, under Section 308(b), factual showings regarding the applicant’s citizenship, character, financial, technical, and other qualifications.⁴¹ Section 309(a) directs the Commission to determine whether the public interest, convenience and necessity will be served “in the case of each application...to which section 308 applies.”⁴² Applicants bear

³⁸ See *U.S. Military Build-up on Mariana Island of Tinian*.

³⁹ See http://www.nasm.si.edu/nasm/aero/aircraft/boeing_b29.htm (visited May 31, 2002).

⁴⁰ See 47 U.S.C. § 310(d). See also *MCI/WorldCom Order* at 18139.

⁴¹ See 47 U.S.C. §§ 310(d), 308, and 308(b). See also *Ameritech/GTE Order* at 6669 n. 9.

⁴² See 47 U.S.C. § 309(a).